

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Bob Nilsen</p> <p>Chad Wilkerson</p> <p>RESPONDENTS</p>	<p>CONTROL GATE AND MEASURING DEVICE NOTICE</p> <p>SEAA No. 1307 DISTRIBUTION ACCOUNTS: 100604, 103059, 100597 WATER RIGHTS: 43-1427, 43-780 (part), 43- 783 (part)</p>
--	--

I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

- (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:*
 - (a) each location where water is diverted from a source; and*
 - (b) any other location required by the state engineer.*
- (2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*
- (3) The state engineer shall approve the design of:*
 - (a) the measuring device; and*
 - (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*
- (6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*
 - (a) forbid the use of water until the user complies with the state engineer's requirement; and*
 - (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. The Respondents own and use a shared diversion structure and measuring device known as the Three Rivers Ranch/Chad Wilkerson Diversion on Mosby Creek operated by the water commissioner on the **Deep Creek** Distribution System under the direction of the

SCANNED

State Engineer. The water commissioner delivers irrigation water under the above rights to the respondents at their shared diversion.

2. The gate stem on the control gate is missing so the gate cannot be locked or set to the proper gate position.
3. The Parshall Flume is not level.
4. The headgate diversion control structure and the flume are located at or near the point North 54 ft East 226 ft W4 corner of section 7, township 3S range 19E SL b&m.
5. The control structures must be maintained in good working condition in order for the distribution system to operate properly and efficiently.

III. ACTIONS REQUIRED

- **Requirement – The Respondent is required to maintain the headgate and measuring device in good condition. This requirement is explained in detail as follows:**

1. The headgate must be fully functional with a gate stem properly connecting the control handle mechanism to the control gate mechanism
2. The headgate must be lockable
3. The Parshall Flume must be level and installed at the proper level
4. The Parshall Flume should be installed such that water does not pass under or around the flume
5. The maintenance must be properly completed before May 15, 2009.

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation of an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.”

SCANNED

V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert Leake
Regional Engineer
Vernal Office
Utah Division of Water Rights
(435) 781-5327

Ben Anderson
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469
1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 15 day of April, 2009



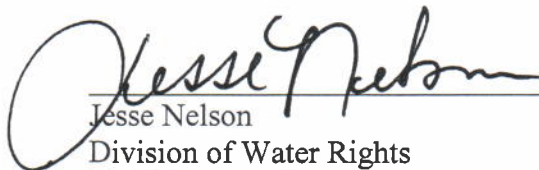
Ben L. Anderson, P.E.
Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 15th day of April, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Bob Nilsen
2410 Walker Lane
Salt Lake City, UT 84117-7718

Chad Wilkerson
P.O. Box 244
Lapoint, UT 84039



Jesse Nelson
Division of Water Rights
Field Services Secretary

SCANNED

U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER:
0308 1400 0001 9804 1467

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

Bob Nilsen
2410 Walker Ln.
SLC, UT 84117-7718

Postmark
Here

POSTAL CUSTOMER:

Keep this receipt. For Inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- ☐ Priority Mail™ Service
☐ First-Class Mail® parcel
☐ Package Services parcel

(See Reverse)

PS Form 152, May 2002

U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER:
0308 1400 0001 9804 1450

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

Chad Wilkerson
PO Box 244
Lapoint, UT 84039

Postmark
Here

POSTAL CUSTOMER:

Keep this receipt. For Inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- ☐ Priority Mail™ Service
☐ First-Class Mail® parcel
☐ Package Services parcel

(See Reverse)

PS Form 152, May 2002

SCANNED